

MOUND COTTON WOLLAN & GREENGRASS

COUNSELLORS AT LAW
ONE NEW YORK PLAZA
NEW YORK, NY 10004-1901

(212) 804-4200
FAX: (212) 344-8066
WWW.MOUNDCOTTON.COM

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April 6, 2020

VIA ECF

The Honorable Stewart D. Aaron
United States Magistrate Judge
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

Application GRANTED. SO ORDERED.

Dated: April 7, 2020

Att'd a

RE: *Contant, et al. v. Bank of Am. Corp., et al.*, No. 17-cv-3139-LGS (S.D.N.Y.)

Dear Judge Aaron:

This office represents non-party Forex Capital Markets, LLC (“FXCM”) in connection with subpoenas served by the Plaintiffs and Defendant HSBC in the above action. We respectfully request an additional 30 day extension of time, to May 6, to meet and confer in an effort to resolve outstanding issues regarding reimbursement of FXCM’s fees and expenses.

Pursuant to the Court’s January 14, 2020 Order (ECF No. 379), counsel for Plaintiffs, HSBC, and FXCM (collectively, the “Parties”) respectfully submit this letter regarding the pending motions to compel compliance with non-party subpoenas to FXCM. As Your Honor will recall, on December 16, 2019, following a telephone conference with the Parties, Your Honor ordered the Parties to file a joint letter regarding any remaining disputes as to the scope of the production by FXCM and setting forth:

(1) the portion of the anticipated production that falls within the scope of both Plaintiffs’ and Defendants’ subpoenas and the anticipated cost of production; (2) the portion of the anticipated production that is specific to Plaintiffs’ subpoena and an estimate of the additional cost as to the Plaintiffs-only portion; and (3) the portion of the anticipated production that is specific to Defendants’ subpoena and an estimate of the additional cost associated with the Defendants-only portion.

ECF No. 367.

On or about March 5, 2020, the parties requested an extension to continue to meet and confer in attempt to resolve the issues concerning the reimbursement of production costs and attorneys’ fees in connection with FXCM’s compliance with the subpoenas. ECF No. 386. Since the extension, the Parties have continued to meet and confer concerning an appropriate

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apportionment of fees and costs, but need some additional time to continue to narrow and resolve these issues.

The Parties have reached an agreement on the scope of FXCM's production in response to Plaintiffs' subpoena and are working to resolve any additional issues. We have not resolved issues relating to the defendants' subpoena, but we are optimistic that such issues can be resolved with the cooperation of the parties under circumstances which may obviate FXCM's need to comply with the defendants' subpoena. Our document retrieval effort, despite the COVID-19 emergency, is well underway, and we have been coordinating with counsel for the Plaintiffs about our progress.

On February 28th, we furnished counsel for Plaintiffs and Defendants with copies of our partially-redacted legal invoices reflecting the amounts that we believe FXCM to be entitled to under Southern District of New York precedent and Rule 45. While Defendants dispute that FXCM is entitled to reimbursement of any attorneys' fees, counsel for FXCM and Defendants have reached an agreement in principal on this issue and are in the process of documenting the agreement.

FXCM and counsel for Plaintiffs have since engaged in two telephonic meet and confers during which we have continued to discuss the issue of attorneys' fees with Plaintiffs' counsel. While Plaintiffs dispute that FXCM is entitled to reimbursement of any attorneys' fees, in light of these discussions, we are hopeful that we can achieve a meeting of the minds without further assistance of the Court. In the event that the parties are unable to reach an agreement, we will seek judicial intervention in 30 days.

No dispute exists between FXCM and Plaintiffs regarding the costs of production as the parties have reached an agreement in principal on the cost of the production. FXCM's efforts to comply with the subpoena continue notwithstanding the current Coronavirus crisis. FXCM has informed Plaintiffs' counsel that it anticipates it will likely complete production by mid-May 2020.

Accordingly, pursuant to Rule I.D of Your Honor's Individual Practices, counsel for the Parties jointly request an additional 30 day extension to see if we can resolve the remaining issues.

Respectfully submitted,

s/Barry Temkin